

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

SOFIA 42 RESTAURANT CORP.  
d/b/a SOFIA ITALIAN GRILL,

Chapter 11 Case  
No. 15-11587 (SMB)

Debtor.

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**APPLICATION TO EMPLOY AND RETAIN MUNDACA ARTESE LLP  
AS ATTORNEYS FOR THE DEBTOR, *NUNC PRO TUNC*,  
AS OF THE FILING DATE**

TO: THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

SOFIA 42 RESTAURANT CORP, the above-captioned debtor and debtor-in-possession (the “Debtor”), by its proposed attorneys, Mundaca Artese LLP, hereby submits this application (the “Application”) seeking entry of an order authorizing the Debtor’s retention of Mundaca Artese LLP (the “Firm”) as its attorneys in this chapter 11 case. In support of its Application, the Debtor respectfully alleges as follows:

**JURISDICTION**

1. The Court has jurisdiction over this Application under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Application in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 327, and 328 of title 11 of the United States Code, 11 U.S.C., *et seq.* (the “Bankruptcy Code”) and Bankruptcy Rule 2014.

### **BACKGROUND**

3. On June 18, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor is operating its business as debtor-in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in this Chapter 11 Case.

4. The Debtor owns and operates an Italian restaurant known as Sofia Italian Grill located in the Rockefeller Center area of New York City at 42 West 48<sup>th</sup> Street, New York, New York (the “Restaurant”).

### **RELIEF REQUESTED**

5. The Debtor seeks to retain the Firm as its attorneys to file and prosecute its Chapter 11 Case and all related matters, effective as of the Petition Date. Accordingly, the Debtor requests entry of an order in substantially the form annexed hereto as Exhibit “B” and pursuant to Bankruptcy Code § 327(a) and Bankruptcy Rule 2014(a) authorizing the Debtor to employ and retain the Firm as its attorneys to perform services necessary in the Chapter 11 Case.

6. The professional services the Firm will render to the Debtor include the following:

- a. To give advice to the Debtor with respect to its powers and duties as Debtor-in-Possession and the continued management of its property and affairs.
- b. To negotiate with creditors of the Debtor and work out a plan of reorganization and take the necessary legal steps in order to effectuate such a plan including, if need be, negotiations with the creditors and other parties in interest.
- c. To prepare the necessary answers, orders, reports and other legal papers required for the Debtor in order to comply with its duties and obligations under the Bankruptcy Code.

- d. To appear before the Bankruptcy Court to protect the interest of the Debtor and to represent the Debtor in all matters pending before the Court.
- e. To attend meetings and negotiate with representatives of creditors and other parties in interest.
- f. To advise the Debtor in connection with any potential refinancing of secured debt, any potential sale of the business, or other strategic transaction.
- g. To represent the Debtor in connection with obtaining post-petition financing, if necessary.
- h. To take any necessary action to obtain approval of a disclosure statement and confirm a plan of reorganization.
- i. To perform all other legal services for the Debtor which may be necessary for the preservation of the Debtor's estate and to promote the best interests of the Debtor, its creditors and its estate.

7. The Debtor has selected Mundaca Artese LLP because its attorneys are well suited to represent the Debtor in its Chapter 11 Case. The Firm has experienced personnel to handle the issues raised in this Chapter 11 Case including the requisite bankruptcy experience. It is necessary for the Debtor to employ Mundaca Artese LLP to render such professional services pursuant to section 327 of the Bankruptcy Code.

8. To the best of the Debtor's knowledge, the Firm has no connection with the creditors or any other party in interest or their attorneys, except that it represents the Debtor in these proceedings as stated in the annexed affidavit of Francisco E. Mundaca, Esq. (the "Mundaca Affidavit"), which is annexed hereto as Exhibit "A."

9. To the best of the Debtor's knowledge, the Firm does not hold or represent any interest adverse to the Debtor's estate, the Firm is a "disinterested person" as defined in Bankruptcy Code section 101(14), and the Firm's employment is necessary and in the best interest of the Debtor and its estate.

10. Subject to Court approval, compensation will be paid to the Firm for services provided on an hourly basis plus reimbursement of actual, necessary expenses incurred. The Firm's current hourly rates for this matter are as follows:

Attorneys \$300 to \$350  
Paraprofessionals \$100

11. The hourly rates above are subject to periodic adjustment to reflect economic and other conditions. The hourly rates above are standard rates for work of this nature and in keeping with the Firm's billing practices. These rates are designed to fairly compensate the Firm for the work of its attorneys and paralegals and to cover fixed routine overhead expenses.

12. The Firm received a pre-petition retainer payment from the Debtor in the amount of \$7,017 on account of legal services, filing fees and expenses in conjunction with the filing of this Chapter 11 Case.

13. The Firm will be paid for the legal services rendered upon application duly filed with this Court pursuant to section 330 of the Bankruptcy Code and pursuant to the procedures established by this Court, governing compensation and reimbursement of expenses of professionals.

14. The Debtor desires to employ the Firm pursuant to Bankruptcy Code § 327 because of the extensive legal services, which are required and indeed are anticipated to be rendered in order to pursue a successful reorganization under Chapter 11 of the Bankruptcy Code.

**WHEREFORE**, the Debtor respectfully requests that this Court enter an Order authorizing it to employ and retain Mundaca-Artese, LLP to represent it in this proceeding under Chapter 11 of the Bankruptcy Code, *nunc pro tunc*, as of the Filing

Date, together with such other and further relief as appears just to this Court, for all of  
which no previous application has been made.

Dated: New York, New York  
August 12, 2015

/s/ Tania Sofia  
Tania Sofia, President

MUNDACA ARTESE LLP  
*Proposed Counsel to the Debtor and  
Debtor-in-Possession*  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re

SOFIA 42 RESTAURANT CORP.  
d/b/a SOFIA ITALIAN GRILL,

Chapter 11 Case  
No. 15-11587 (SMB)

Debtor.

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**AFFIDAVIT OF FRANCISCO E. MUNDACA IN SUPPORT OF APPLICATION  
TO EMPLOY AND RETAIN MUNDACA ARTESE LLP AS ATTORNEYS FOR  
THE DEBTOR, *NUNC PRO TUNC*, AS OF THE FILING DATE**

STATE OF NEW YORK     )  
                                      ) SS.:  
COUNTY OF NEW YORK    )

FRANCISCO E. MUNDACA, ESQ., being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before this Court and a member of the firm Mundaca Artese LLP (the "Firm") with its primary office located at 600 Third Avenue, 2<sup>nd</sup> Floor, New York, NY 10016.

2. I submit this Affidavit in support of the Debtor's Application to Employ and Retain Mundaca Artese LLP as Attorneys for the Debtor in connection with the above-captioned Chapter 11 Case on the terms set forth in the accompanying Application.

3. Neither I, nor Mundaca Artese LLP or any attorney at the Firm has any connection with the Debtor, its creditors, or any other party in interest herein or their respective attorneys except as described below. Furthermore, neither I, nor Mundaca Artese LLP or any attorney at the Firm is a prepetition creditor of the Debtor.

4. Based upon all of the foregoing, I respectfully submit that Mundaca Artese LLP does not hold nor represent any interest adverse to the Debtor herein or its estate, in the matters upon which they are to be engaged.

5. The Firm shall make proper application to the Court for compensation for the services rendered to the Debtor in this proceeding pursuant to § 330 of the Bankruptcy Code and pursuant to the procedures established by this Court, governing compensation and reimbursement of expenses of professionals.

Disclosure Procedures and Conflicts Check

6. In preparing this affidavit, I searched the following categories:

- a. Debtor;
- b. Significant equity holders;
- c. Current directors and officers;
- d. Lenders and secured creditors;
- e. Counterparties to leases;
- f. Parties to pending litigation;
- f. Professionals; and
- g. Unsecured Creditors.

7. Upon review of the list, to the best of my knowledge and information after a reasonable inquiry, Mundaca Artese LLP does not hold or represent any interest that is adverse to the Debtor's estate and Mundaca Artese LLP is a disinterested person.

8. The Firm is not aware of any past or present relationship that would disqualify the Firm from representing the Debtor in this Chapter 11 Case.

9. Although the Firm has attempted to identify all such representations, it is possible that Mundaca Artese LLP may have represented certain of the Debtor's creditors or other entities that consider themselves parties-in-interest in matters unrelated to this case. If Mundaca Artese LLP discovers additional information that requires disclosure for the Application, Mundaca Artese LLP will promptly file supplemental disclosures with the Court.

Disinterestedness

10. Based on the foregoing and to the best of my knowledge, the law firm of Mundaca Artese LLP is a disinterested person within the meaning of § 101(14) of the Bankruptcy Code in that its members and associates (a) are not creditors, equity security holders or insiders of the Debtor, (b) are not and were not within two years before the Filing Date a director, officer or employee of the Debtor, and (c) do not have an interest materially adverse to the interest of the estate, or any class of creditors or equity security holders by reason of any direct or indirect relationship to, connection with, or interest in the Debtor, or for any other reason.

Billing Rates and Compensation

11. The Firm's billing rates for this matter are as follows:

Attorneys \$300 to \$350  
Paraprofessionals \$100

12. The hourly rates above are subject to periodic adjustment to reflect economic and other conditions. The hourly rates above are standard rates for work of this nature and in keeping with the Firm's billing practices. These rates are designed to fairly compensate the Firm for the work of its attorneys and paralegals and to cover fixed



routine overhead expenses. Mundaca Artese LLP also will seek reimbursement for all out-of-pocket expenses in connection with the Debtor's case.

13. The Firm received a pre-petition retainer payment from the Debtor in the amount of \$7,017.00 on account of legal services, filing fees and expenses in conjunction with the filing of this Chapter 11 Case. This retainer shall be applied towards Chapter 11 fees and expenses.

14. No agreement exists to share any compensation received by Mundaca Artese LLP for its services to the Debtor with any other person of firm. No promises have been received by Mundaca Artese LLP or by any member or attorney thereof as to compensation in connection with this case other than in accordance with the Bankruptcy Code.

**WHEREFORE**, your Affiant respectfully requests the entry of the pre-fixed order, together with such other and further relief as is proper.

/s/Francisco E. Mundaca  
Francisco E. Mundaca, Esq.

Sworn to before me this  
12th day of August, 2015

/s/Maria Doris Jimenez  
Notary Public  
State of New York  
No. 01JI6254664  
Qualified in Queens County  
My Commission Expires: 1/23/2016

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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**ORDER AUTHORIZING AND APPROVING RETENTION OF  
MUNDACA ARTESE LLP AS ATTORNEYS FOR THE DEBTOR,  
NUNC PRO TUNC, AS OF THE FILING DATE**

UPON the application of the above captioned Debtor and Debtor-in-Possession (the “Debtor”), by Tania Sofia, the President of the Debtor, requesting authorization to employ and appoint the law firm of Mundaca Artese LLP as bankruptcy counsel to represent the Debtor herein (the “Application”), and upon the annexed affidavit of Francisco E. Mundaca, Esq., and it appearing that Francisco E. Mundaca, Esq. is an attorney duly admitted to practice in this Court, and the Court being satisfied that Mundaca Artese LLP represents no interest adverse to the Debtor, or to its estate, in the matters upon which it is to be engaged and is a disinterested person within the meaning of § 101(14) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”); and that its employment is necessary and would be in the best interests of the estate, it is hereby:

ORDERED, that the Application is granted in its entirety; and it is further

ORDERED, that pursuant to section 327(a) of the Bankruptcy Code, the Debtor is authorized to employ and retain Mundaca Artese LLP as counsel to represent it as Debtor in the above captioned proceedings under Chapter 11 of the Bankruptcy Code, *nunc pro tunc*, as of the filing date, June 18, 2015; and it is further

ORDERED, that compensation of said attorneys for the services to be rendered and reimbursement of out-of-pocket expenses shall be sought upon proper application pursuant to sections 330 and 331 of the Bankruptcy Code and pursuant to the procedures established by this Court governing the compensation and reimbursement of expenses of professionals; and it is further

ORDERED, that in the event that Mundaca Artese LLP's hourly rates should change, Mundaca Artese LLP shall notify the Court and the Office of the United States Trustee, in writing; and it is further

ORDERED, that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: New York, New York  
\_\_\_\_\_, 2015

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THE HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION:  
OFFICE OF THE UNITED STATES TRUSTEE

\_\_\_\_\_  
By: